

ALASKA'S NUREMBERG LAWS

Congress Sanctions Racial Discrimination

FELIX S. COHEN

FOR the first time in our history, it has been decreed by Congress that a government bureau may seize the possessions of Americans solely because they belong to a minority race. That is the meaning of the Tongass Act, which deprives Alaskans of their land and timber if two or more of their grandparents were Indians, and which quietly became law on August 8, 1947.

In the House, the Tongass Timber Bill had been passed through a parliamentary maneuver at an early morning hour, usually devoted to prayer and to receiving communications, when hardly a dozen members were in their seats. In the Senate, four efforts to pass the bill by "unanimous consent" had failed. One by one the Senators who objected were threatened or cajoled into acquiescing; the final surrender came at two o'clock in the morning in the last minutes of the 1947 session of Congress, when Senator Watkins of Utah, head of the committee that had considered

the bill, wearily announced, at the prodding of Senator Taft, that he would not let his grave doubts as to the constitutionality of the measure stand in the way of its enactment.

The new law authorizes expropriation of Indian land and timber in Southeastern Alaska, which had been protected by federal legislation since 1884. The native owners of the land and timber that is to be sold will not be consulted. Money received for the property—true enough—will be taken up by the Treasury and owners can try to get it from Congress. But the Tongass Act confers no authority to pay out any such receipts, even if the property owner clearly establishes his title in court. Indeed, the federal bureaus concerned have decided that even before they sell the timber—and it may be a decade or a century before they do—the Indian owners have lost any right to cut logs on their own lands. Those who defy the ruling of the bureaus and cut trees on their own woodlots—whether for fuel, home building, boat construction, or totem pole carving—face the prospect of being sent to prison.

Until last August, no Congress had ever passed a law depriving a racially-defined group of its possessions. Even the wartime drive to imprison Americans of Japanese ancestry was a military action, not directed by Congress; and the most extreme of all Congressional expropriation acts—that which confiscated the property of the Mormon church sixty years ago—at least respected the property of individuals of the Mormon faith. Now for the first time in our national history, Congress has said that a man's right to individual and corporate property may be canceled if—as defined in

THE gap between American ideals and American practice has nowhere been more poignantly evident than in the unsavory history of our treatment of the Indians. Latest in a long and not yet ended series of injustices is the Tongass Timber Bill, which deprives Alaskans of their land and timber on a principle strikingly reminiscent of Germany's Nuremberg Laws. FELIX S. COHEN here speaks for these exploited Americans, and points out some ominous possibilities of this newest effort to give legal sanction to racial discrimination. Mr. Cohen, now practicing law in the District of Columbia, was until recently on the legal staff of the Department of Interior. He is the author of a treatise on Federal Indian Law, a book on legal philosophy (*Ethical Systems and Legal Ideals*), and numerous magazine articles. Mr. Cohen was born in New York in 1907, and studied at the City College of New York, Harvard, and Columbia Law School.

the statute—two or more of his grandparents were of a specified race.

What is done to Indians or Eskimos in Alaska today can be done to Negroes in the South tomorrow, and to Jews, Catholics, or descendants of non-Anglo-Saxon strains the day after tomorrow. For four centuries the Indian has served as the guinea pig for new forms of race discrimination in our land. If the land and timber of Alaskan Indians can be expropriated and turned over to a federal bureau, it is possible to pass other laws expropriating the property of other minorities.

HISTORY reminds us that the techniques of maltreatment and exploitation which buccaneers, businessmen, and bureaucrats developed years ago to deal with Indians in the New World were brought back, when perfected, to the motherland for use against its own citizenry. Modes of torture and destruction perfected in the New World racked the body and soul of Spain. Throughout Latin America the military and economic dictatorship, originally designed to hold the Indian in subjection and embellished by the moral language of trusteeship (*encomienda*), came to enslave white men and black men as well.

In our own land of freedom, modes of racial aggression that were tried out in California against Indians were effectively transferred, a decade or two later, to the newly arrived immigrants from China. The West Coast vigilante wars of the 1850's against the Indians did not come to an end when the Indians of California, reduced to a tiny fragment of a once prosperous population, were driven from their fertile gardens and opulent fishing places. The war continued, with only the victims changed: experts in violence do not usually retire when a war has been won. The Chinese inherited the role of the Indian as the race peril against which efforts of vigilante bands and race-conscious legislators might be enthusiastically directed. Out of this glorified racial violence came the first breach in the traditional American

policy of welcome to pilgrims from the Old World. That first breach, embodied in the Chinese Exclusion Laws of 1884, violated a solemn treaty with China, but a Californian on the Supreme Court who had led the fight for a Chinese Exclusion Law was able to persuade his brethren on the bench that a mere treaty should not stand in the way of accomplishing this high racial objective. So was proclaimed the principle, which has become the law of the land, that treaties with foreign nations or Indian tribes may be freely violated by Congress.

Successive elaborations of legalized xenophobia did not decline when the supply of Chinese victims failed. The hardy pioneers of the Pacific Coast soon selected the Japanese to fill the gap. And when the Japanese Exclusion Act, passed in violation of a "gentlemen's agreement," forced the racists to look in new directions for victims, Californians like the great Progressive Senator Hiram Johnson led the nation in new assaults against the revolutionary idea that all men are created equal. The Johnson immigration quota law established permanent discriminations against all immigrants who did not come from the British Isles. What was chiefly attractive about British immigrants was that they did not immigrate. As the only good Indian was a dead Indian, so the only good immigrant was the immigrant who stayed at home.

HUMAN intolerance takes many forms. Intolerance towards Catholics does not take the form of Jim Crow cars. Intolerance towards Jews does not ordinarily take the form of lynchings. Intolerance towards the Negro does not take the form of bars to naturalization, as does our intolerance to the Oriental, nor the form of expropriation of landholdings, as does our intolerance to the Indian. And yet, diverse as are the forms of intolerance, there is, underlying all of them, a common sense of irritation at the sight of those whom we have wronged. This irritation increases when the victim

steps out of the role in which we have placed him. Jim Crow cars, ghettos, restrictive covenants, concentration camps for the Nisei of the West Coast, racist immigration laws, these are normal reactions of a stricken public conscience.

Because racial intolerance leads to chain reactions which seriously threaten the destruction of civilization, it is important that we face up promptly to the question of justice and injustice in our legislation on race problems.

This is a difficult thing to do in post-war Washington. Words of sympathy for oppressed groups come cheaply, especially in the months before a national election. Congressmen find it easy to tell oppressed minorities how the President should redress their grievances. And it is just as easy for the President to tell oppressed minorities how Congress should redress grievances which, for one reason or another, the President does not desire to solve himself by the exercise of presidential powers. Lip service is easy enough; action based on vision and justice is another matter.

In Washington the flight from justice takes many forms, but underlying all these forms is the dogma that injustice or immorality is primarily a matter of feeling or emotion, and therefore never a legitimate concern of politics. In the language of the Washington bureaus, one must be "practical," and that means ignoring the lessons of yesterday and the hopes and fears of tomorrow. In fact, some of the most "practical" of our contemporary statesmen have persuaded themselves that tomorrow does not exist except in the imaginations of professorial "long-hairs." When plans for Poland, or Czechoslovakia, or Palestine, or military demobilization, or economic decontrol produce, within a few weeks, results which a sixth grade student could see coming with one eye shut, there is never an admission of short-sightedness. Instead we hear a plea for increased trust in the administration: according to the classical formula, the situation is extreme-

ly serious, therefore the people should not give play to their emotions (judgments of "right" and "wrong" being "emotions" in the gobbledygook of Washington bureaus), but should suspend judgment and support whatever measures the administration thinks needful.

In this atmosphere, pleas for justice to the tiniest of our minorities, who have at their command few votes in the marginal states, have fallen on deaf ears. The telling epithet "long-hairs" was ever on the lips of practical-minded cabinet officers when their advisers tried to remind them that justice to the native Indian population was an essential ingredient in any large-scale program of Alaskan development. One by one the advisers grew weary of the task of describing moral colors to the morally color-blind.

THE task of ethical criticism of the federal program of racial expropriation in Alaska soon passed by default from demoralized government circles to church groups interested in human rights. These could still see an injury to a small minority in a remote corner of our land as a threat to human dignity everywhere.

The *Christian Century's* article on the Tongass Act commented: "Congress has written one of the blackest pages in our history of Indian Affairs by passing the Alaskan expropriation bill. . . . The only hope the Alaska Indians have is that the Christian conscience of our country shall speak forcibly to secure remedial legislation at the next session of Congress." The liberal Catholic weekly, *Commonweal*, was equally critical: "Indians who have returned from the wars to find a scheme of racial expropriation depriving them of their livelihoods and their hopes for the future are profoundly disturbed. They observe grimly that in 1844 His Imperial Majesty, the Autocrat of All the Russias, ordered the officials of the Russian-American Company to 'obtain the consent of the natives' when they wished to acquire native lands or resources. Even the autocracy of the

Czars, the most absolute of its generation, was not as autocratic as the autocracy of modern materialism which excludes human values from bureaucratic balance sheets."

Former Interior Secretary Ickes, who knew the nature of the pressures that had been brought to put over the Tongass timber steal—having successfully resisted similar pressures for thirteen years himself—devoted two of his columns to the legislation, which he characterized as "an off-color bill to consummate a discreditable conspiracy . . . intended to plunder the Indians ruthlessly for private profit."

Other voices joined the protest. An editorial writer in the *Richmond Times-Dispatch* declared: "The white man in Alaska despises the 'Siwash' (a distortion of the French word *sauvage*). A psychologist may find the root of that contempt in the involuntary guilt which men invariably feel when they profit at the expense of 'lesser breeds without the law.' Yet, neither the Interior Department, nor the presidentially appointed Governor of Alaska, both 'guardians' of the rights of the natives, protested against the shameless steal perpetrated by House Joint Resolution 205."

It remains to be seen whether these outcries will have any effect. Similar criticisms made within Washington officialdom before the program was launched raised hardly a ripple.

FLUSHED with success, the economic masters of Alaska have now inaugurated campaigns for new legislation to expropriate Indian lands and fisheries. The Alaska Salmon Trap Bill would take from Indians fishing sites worth millions of dollars and give them to the Alaska Salmon Industry Incorporated of Seattle and its affiliates. The Butler Bill to abolish reservations in Alaska would turn over Indian lands to the tender mercies of absentee mining companies. An Alaskan Indian summed up the situation: "First it was the Timber Wolves," he said. "Now it's the Fish Hawks. Next, I guess, will come the Gold Diggers."

The current assaults upon native possessions in Alaska are led by representatives of salmon packing companies, mining companies, and pulp syndicates. Each of these groups has good friends in the bureaus—the first two in the Department of the Interior (particularly in that Department's Fish and Wildlife Service), the last in the Forest Service of the Department of Agriculture, and all three in the Territorial Government of Alaska.

The task of drafting the various Indian expropriation measures and lobbying for them is jointly shared by industry lobbyists and federal and territorial officials. The registration record of one lobbyist shows that he received two hundred and fifty dollars a day for cooperating with Interior officials in drafting expropriation legislation. A few of the federal employees who have led the battle to extinguish Indian property rights have left government employment to take more attractive positions with the very industries they were supposed to regulate. Other federal employees in the forefront of the fight have found it possible to receive outside emoluments from the industries they are serving without ever abandoning their government connections.

At this writing, the outcome of the latest raids is uncertain. The Salmon Trap Bill seems to have been blocked, for the time being, by the protests of Indians, unions, and consumers. The Butler Bill to wipe out Alaskan reservations, after being amended to allow Indians space for burial but no space for earning a livelihood—again the theory that the only good Indian is a dead one—was sneaked through the Senate in the manner of the Tongass Bill, during the early morning hours of the last day of the last session, when opponents were off the floor. An effort to sneak the bill through the House was blocked, but will undoubtedly be renewed at the special session of Congress. The Indian Bureau will recommend a presidential veto if the bill is passed, but Senator Magnusson, along with some of Seattle's Timber Wolves,

Fish Hawks, and Gold Diggers, will visit the White House and try to get a Presidential signature on Alaska's Second Nuremberg Law.

IN Alaska the spirit of business enterprise is seemingly summed up in the words: "To him who hath shall be given, and from him who hath not shall be taken away even that which he hath."

Colonialism in Alaska means that the people of that territory are not permitted to use its resources without paying absentee owners for the privilege. The Indian fisherman must pay eighty-five cents for a can of the salmon that he has just caught and sold for eight cents, and he must wait for the Alaska canned salmon to be shipped to Seattle, dressed up in labels, filtered through intermediaries, and shipped back to Alaska at the highest freight rate in America before he can enjoy the privilege of eating the produce of his labor. Colonialism further means that natives are arrested when they seek to cut their own trees or dig minerals on their own land. It means that people in Alaska, native or white, who work for a living and do not share in the profits of absentee owners are condemned to die of diseases traceable to malnutrition. The story of the Alaskan natives is graphically told in two sentences of a report in the *Journal of the American Medical Association* for October 25, 1947: "The school teacher at Barrow stated that of 30 children between the ages of 5 and 6 who had entered school but 6 lived to finish. The majority of deaths were due to tuberculosis."

Such are the human footnotes to a "favorable balance of trade" under which exports from Alaska for the thirty-five years before the war exceeded imports by 88 per cent, or 959 million dollars.

Who got the 959 million dollars? By and large it went to absentee owners who showed no interest in reinvesting their gains in Alaskan industry. Had these sums gone into local improvements and local industry, into the building of roads, schools,

hospitals, homes, sawmills, machine shops, and shipyards, Alaska might today be a thriving replica of modern Scandinavia. For Sweden, Norway, and Finland combined, lying in the same latitude as Alaska, enjoying approximately the same range of climatic conditions, and about the same mineral, agricultural, forest, and wildlife resources with a somewhat smaller area, maintain a population of 13 million or more on a high level of health, comfort, and civilization. Alaska, on the other hand, boasts a permanent population of between 70,000 and 90,000, half or nearly half of Indian, Eskimo, or Aleutian stock.

The fact that Alaska has less than one person for every six square miles does not prevent its absentee rulers and their faithful resident spokesmen in chambers of commerce and bar associations from raising storms of protest against all plans to encourage Alaskan settlement. The Lemke Bill to liberalize the homestead laws for the benefit of veterans, which passed the House unanimously last year, now appears to have been killed in the Senate, killed by the same combination of forces that put over the Tongass timber steal. The same interests, a few years ago, were screaming to high heaven against the Roosevelt-Ickes program of inviting would-be immigrants from Europe to come to unsettled areas of Alaska and there build a New Scandinavia under the American flag.

But the chambers of commerce make it clear in their promotion leaflets that they are not opposed to *all* immigrants. Any American citizen with \$5,000 in cash will be welcome, at least until his cash is gone—although immigrants with 25 million dollars are preferred. But American citizens with \$5,000 in free cash over and above all debts are, statistically, near the top of the economic ladder and not likely to emigrate to a frontier land.

IT is only fair to say that the economic overlords of Alaska are not motivated by race prejudice. They are merely reluctant to dilute their control of an incred-

ibly wealthy territory. To be sure, to protect their take they are not above whipping up racial propaganda against Indians or against refugees. They are also capable of pitching their propaganda to the key of conservation and the need to keep the forests and lands of Alaska out of Indian or veteran or refugee hands, an untouched reserve for future generations. But the nub of the matter is always the same: They have a grip on something that they don't want to let go.

Two presidents and two secretaries of the interior have challenged that grip, but Alaskan settlement is still the great fiasco of American history: the permanent population of Alaska today is just about what it was two centuries ago.

President Roosevelt and President Truman told their secretaries of the interior, not once but many times, that it was necessary to settle hundreds of thousands of pioneer families in Alaska. Secretary Ickes and Secretary Krug both wholeheartedly seconded the policy of Alaskan settlement. But at every point where the policy led to conflict with absentee owners of Alaskan resources, it was the national policy and the welfare of Alaska that went by the board. Somewhere down the line there was always a layer of government employees whose first allegiance was to the industries that now skim the Alaskan cream.

The key, for example, to Alaska's number one industry, the salmon industry, is control of the strategic fishing places. This key is held firmly in the hands of half a dozen large absentee-owned packing companies, who are allowed by the Department of the Interior to monopolize most of the strategic salmon trap sites of Alaska, notwithstanding a law of Congress prohibiting such private control of fishing areas. It took Secretary Ickes six years to fight his way through layer after layer of subordinates to get eleven salmon trap sites out of the hands of the Alaska Salmon Industry and its affiliates, and back into the hands of the local fishermen of three native fishing villages that had been using

or trying to use the sites from time immemorial. But within five months after Secretary Ickes left office, his temporarily defeated subordinates had reasserted themselves and the eleven traps were safely back in industry hands.

HISTORY shows that plunder, to be successful on a large scale, must be able to point to a high moral motivation, and, though it is difficult to see how the ruthless plundering of Alaskan natives (some of whom live within two miles of Soviet territory) can be said to contribute to the moral prestige of America in the world of today, the moral difficulty is not insuperable for men of ingenuity.

The most appealing justification for the plundering of Indians is in terms of national destiny. According to the common stereotype, the Indian, hopelessly wedded to an outworn culture, squats across the road of progress; considerations of the larger good require that he be shoved into the ditch.

This portrait has the virtue of simplicity, but it also has a grave defect: it completely distorts the facts.

The main argument for the Tongass Bill was the Department of Agriculture's assurance that it would bring immediate development of at least two, and probably more, twenty-five million dollar pulp mills in Alaska. The argument of the Indians' attorneys, that no bank would risk money on the strength of a law that was plainly unconstitutional, was brushed aside. But after the bill became law, four auctions of the expropriated timber lands were held—with no bidders.

The facts are that Indians in Alaska have made more progress in the development of their resources than white settlers, who are commonly content to live on canned goods from Seattle, and to dwell in houses of imported brick if they can afford to do so. Of the hundreds of white settlers who came to Alaska, only a handful have stayed and raised families. The vast majority entered with the object of getting

rich and getting out—and though few got rich almost all got out.

One has to go to an Indian reservation, like that on Annette Island, to find a community that has directed its energies to the development of its permanent resources, its fisheries, timber, and water power. It is on this reservation that one finds the only modern town in Alaska—perhaps in North America—without slums, unemployment, or taxes, where every family has a comfortable home with free electricity and running water. The native inhabitants of Annette Island have not had an opportunity to learn the meaning of unemployment in the midst of natural wealth. Even outside of the Annette Island Reserve, Indian-owned resources have for many years been utilized at a high rate, and with better conservation safeguards than natural resources on the public domain.

For that section of the public where some knowledge of the facts can be expected, an entirely different line of justification for the present raid on Alaskan native possessions is necessary. A few years ago, a dispute over land ownership between an Indian tribe and a railroad was decided in the lower courts in favor of the railroad, on the ground that the Spaniards, centuries ago, had wiped out the rights of the Indians. The decision was reversed by the United States Supreme Court, which pointed out that the Spaniards had done nothing of the sort, and that even if they had, the Indians were entitled to protection of their possessions under the law of the United States. But despite this vindication of Indian land claims in the Supreme Court, proponents of current Indian expropriation bills seek to justify their measures by asserting that many decades ago another sovereign, this time the Czar of Russia, connived with Secretary Seward to wipe out the rights of the Alaskan natives, although there is no historical evidence for any such assertion. The pattern of fleecing Indians and blaming the decision on our grandparents has many advan-

tages, not the least of which is that we can thus enjoy both the Indians' property and the white man's sense of moral superiority.

ALONG similar lines, a skillful manipulator can draw a tidy profit from the common feeling of guilt about our ancestors' treatment of the Indian. All that he needs to do is to transfer the public sense of shame to the decent things that our ancestors actually did in their dealings with Indian tribes, such as paying for lands that Indians were willing to sell, or allowing the Indians to reserve for their own use portions of their original domain.

The fact is that the acknowledged right of Indian tribes to reserve portions of their original domain for their own continued use, to draw a line and keep out the trespassing white settler or cattleman, was the one thing that made it possible for so many Indian tribes to regroup their forces, and to emerge, after a century or more of dealings with white civilization, not as a defeated and suppressed minority, but as a vigorous people, increasing more rapidly in numbers than any other racial group in the nation. To the Indian, his reservation is home, his "promised land," often the land about which his creation-myths and childhood legends cluster, and generally all that stands between him and the spiritual and physical destruction that most non-reservation tribes have undergone.

To the unthinking white man, however, a "reservation" is an unhappy residue of a process that is unpleasant to think about. The tactic of giving Indian property bad names, of calling his land a "reservation" in tones that one uses for "concentration camp," and then "freeing" or "emancipating" the Indian by taking away his reservation has today the blessing of every scoundrel who casts covetous eyes on Indian wealth. This semantic manoeuvre is being worked to its limit by the chambers of commerce in Alaska.

The distinguished head of the Senate Interior Affairs Committee, Senator Butler

of Nebraska, and the learned Governor of Alaska, Dr. Ernest H. Gruening, are both firmly convinced that allowing Alaskan natives to own substantial tracts of the land which they have used and occupied for centuries would make for "segregation." Of course, it would be just as logical to urge that the large landholdings of white men and white corporations in Alaska make for segregation, and that if white men were deprived of their possessions by act of Congress they would have to seek food and shelter from generous Indian and Eskimo villagers, thus ending the white man's "segregation" in Alaska.

But the opposition to "segregation" is not a matter of logic. It is a matter of deep-seated emotion. Even outside of backwoods America, there are many good people who are deeply pained when they visit Puerto Rico and hear American citizens talking Spanish or visit New York and hear Italian or Yiddish being spoken in the city streets. These same good people are equally disturbed when they learn of Indian villagers in Alaska who are not anxious to imitate the cultural habits of the white pioneers that they meet in the streets of Juneau or Fairbanks. To those who harbor such resentments, it seems almost a patriotic duty to wipe out centers of "alien" culture, whether the "menace" comes from 20th-century Mayflowers or from our original hundred per cent Americans.

HERE in America, the treatment of minorities has always been the best index of liberal civilization. Advances or inventions in our commerce, industry, science, or government begin as unorthodox ideas,

and have flourished on this soil because America was par excellence a land where men could differ from their neighbors and find tolerance. American prosperity, no less than American inventiveness and American freedom, are profoundly threatened by any upsurge of intolerance. And of all forms of intolerance that directed against a racial minority is the most terrible, because there is no escape from one's race. The victim of economic oppression may be buoyed up in the struggle for existence by the hope that he can improve his economic status; the worker may become an employer. The victim of religious oppression can, as a last resource, embrace the religion of his oppressors. The victim of racial persecution cannot change his ancestors. For these victims there is no sanctuary and no escape.

And yet, terrible as is the fact of racial oppression to an oppressed minority, it is, in the long run, more terrible to the dominant society of the oppressor. For the fact remains that while racial intolerance has seldom destroyed its intended victim, it has almost always, in the end, destroyed the society in which it flourished.

That is why our treatment of our oldest racial minority in America has an importance that is not to be measured by the number of Indians who are mistreated. A democracy entrusts the task of maintaining its most precious liberties to those who are despised by their fellow men. The gallant fight that Alaskan natives are waging today for the defense of their rights is a fight against racist principles that threaten all Americans. For the rights of each of us in a democracy can be no stronger than the rights of our weakest minority.